



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

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Legend:

Contributors =

Consultant =

Dear :

This is in response to your letter dated June 26, 2009 requesting an extension for an additional five years under section 4943(c)(7) of the Internal Revenue Code ("Code") for disposing of certain excess business holdings.

FACTS

You are a private foundation that is organized as a trust. You have been recognized as an organization exempt from federal income tax under section 501(c)(3) of the Code and classified as a private operating foundation under section 509(a). You are organized and operated exclusively for charitable purposes by establishing and administering educational programs within public and private schools.

Contributors and their family members contributed to you a 20.6% profits interest in a limited liability partnership ("Partnership"). As a result of the contribution, your ownership interest constitutes excess business holdings under section 4943(c)(1) of the Code. Contributors and their family members continue to hold 75.9% in the Partnership. One of the Contributors is the general partner in the Partnership. Your initial five-year period for disposing of excess business holdings ends on December 5, 2009.

Partnership is the licensee of three radio stations. Partnership has made substantial capital improvements to the radio stations over the years. The radio stations are all on the same frequency and are synchronized and simulcast as one station. When Contributors made the contribution of the Partnership interest to you, it was Contributors

intention to sell the radio stations when the capital improvements were completed.

During the initial five-year period for disposing of excess business holdings under section 4943(c)(6) of the Code, you engaged the services of Consultant, a broadcast broker to sell the radio stations. Consultants prepared a comprehensive Memorandum of Offering. The offering presents the radio stations in a package as a single operating entity. The best value of your interest in the Partnership would be derived from a sale of the combined radio stations as a single operating entity.

You state that Consultant has presented the Memorandum of Offering to more than 30 potential purchasers over the last three years. In addition, representatives of the Partnership have attended several conventions over a three year period to meet with potential purchasers.

You state that most of the major radio station groups, already own the maximum number of radio stations allowed and that the entry fee into this type of market is steep. In addition, since 2007 there has been a dramatic decline in the number of station sales. You state that a radio station was sold in 2009, and that this sales transaction would be indicative of what the value of Partnership's radio station would be if a buyer could be found. Consultant states that given the current economic climate, the offering price for the Partnership's radio stations would be substantially below market value. In addition, Consultant states that financing for the purchase of radio stations is not currently available to potential buyers. Consultant believes that a turnaround will occur over the next two to three years.

You also state that a further impediment to the sale of the radio stations is the unique complexity of how the radio stations are technically setup. This unique concept is new to the industry.

Prior to the end of the initial five-year period for disposing of excess business holdings under section 4943(c)(6) of the Code, you submitted a request to the Internal Revenue Service for an extension of five years to complete the required disposition. In this request, you explained the difficulties you encountered, as described above, in disposing of the radio stations by the Partnership. You also described the Partnership's plan to dispose of the Stations within an additional five-year period. You submitted the new plan to your state's Attorney General and the Attorney General has no objection to the five-year extension for disposing of the radio stations.

Under your new plan, you state that the Partnership will continue to make operational and technical improvements in the radio station's operations. By making these operational and technical improvements, Consultant believes that the radio stations will be well placed for a sale at a price that approximates the true value of the Stations. Consultant believes that a sale should occur within the next 3 to 4 years.

## RULING REQUESTED

You requested a ruling extending the five-year period of time for disposing of your excess business holdings for an additional five years under section 4943(c)(7) of the Code.

## LAW

Section 4943(a)(1) of the Code imposes excise taxes on the excess business holdings of any private foundation in a business enterprise.

Section 4943(c)(1) of the Code provides that the term "excess business holdings" means, with respect to the holdings of any private foundation in any business enterprise, the amount of stock or other interest in the enterprise which the foundation would have to dispose of to a person other than a disqualified person in order for the remaining holdings of the foundation in such enterprise to be permitted holdings.

Section 4943(c)(2) of the Code provides in part that the permitted holdings of any private foundation in an incorporated business enterprise are 20 percent of the voting stock, reduced by the percentage of the voting stock owned by all disqualified persons.

Section 4943(c)(2)(C) of the Code provides that a private foundation shall not be treated as having excess business holdings in any corporation in which it (together with all other private foundations which are described in section 4946(a)(1)(H) owns not more than 2 percent of the voting stock and not more than 2 percent in value of all outstanding shares of all classes of stock.

Section 4943(c)(3)(A) of the Code provides that the permitted holdings of a private foundation in any business enterprise which is not incorporated shall be determined under regulations prescribed by the Secretary. Such regulations shall be consistent in principle with paragraphs (2) and (4), except that in the case of a partnership or joint venture, "profits interest" shall be substituted for "voting stock", and "capital interest" shall be substituted for "nonvoting stock."

Section 4943(c)(6)(A) of the Code provides that, if there is a change in the holdings in a business enterprise (other than by purchase by the private foundation or by a disqualified person) which causes the private foundation to have excess business holdings in such enterprise, the interest of the foundation in such enterprise (immediately after such change) shall (while held by the foundation) be treated as held by a disqualified person (rather than by the foundation) during the 5-year period beginning on the date of such change in holdings.

Section 4943(c)(7) of the Code provides that the IRS may extend for an additional five years the initial five-year period for disposing of excess business holdings in the case of an unusually large gift or bequest of diverse business holdings or holdings with complex corporate structures if:

(A) The foundation establishes that: (i) it made diligent efforts to dispose of such holdings during the initial five-year period, and (ii) disposition within the initial five-year period has not been possible (except at a price substantially below fair market value) by reason of such size and complexity or diversity of holdings;

(B) Before the close of the initial five-year period: (i) the private foundation submits to the Internal Revenue Service a plan for disposing of all of the excess business holdings involved in the extension, and (ii) the private foundation submits the plan to the Attorney General (or other appropriate State official) having administrative or supervisory authority or responsibility with respect to the foundation's disposition of the excess business holdings involved and submits to the Internal Revenue Service any response the private foundation received during the five-year period; and

(C) The Internal Revenue Service determines that such plan can reasonably be expected to be carried out before the close of the extension period.

## ANALYSIS

You are subject to section 4943 of the Code, which imposes a tax on the excess business holdings of private foundations. Generally, under sections 4943(c)(2)(A) and 4943(c)(3)(A), a private foundation is permitted to hold twenty percent of the profit interest in a business enterprise with any excess constituting excess business holdings. However, if a private foundation acquires holdings in a business enterprise other than by purchase (e.g., by contribution) which causes the foundation to have excess business holdings, then the interest of the Foundation in such business enterprise shall be treated as held by a disqualified person (rather than the Foundation) for a five-period beginning on the date such holdings were acquired by the Foundation, under section 4943(c)(6)(A).

Under section 4943(c)(7) of the Code, the Internal Revenue Service may extend the initial five-year period for disposing of excess business holdings for an additional five years if you establish that: (i) you made diligent efforts to dispose of such holdings during the initial five-year period, and disposition within the initial five-year period has not been possible (except at a price substantially below fair market value) by reason of such size and complexity or diversity of holdings, (ii) before the close of the initial five-year period you submit to the Internal Revenue Service and Attorney General (or other appropriate State official) having administrative or supervisory authority or responsibility

with respect to the foundation's disposition of the excess business holdings involved a plan for disposing of all of the excess business holdings involved during the extension and (iii) the Internal Revenue Service determines that such plan can reasonably be expected to be carried out before the close of the extension period.

You received a contribution of a 20.6% profits interest in Partnership from your Contributors, who own a majority of the Partnership. Because of the interest of contributors, your holding in excess of the 2% de minimis amount in section 4943(c)(2)(C) of the Code is an excess business holding. Therefore, you are required under section 4943(c)(6) to dispose of all of these shares during an initial five-year period ending on December 5, 2009.

During the initial five-year period, as required by section 4943(c)(7)(A)(i) of the Code, the Partnership has made diligent efforts to dispose of the radio stations. The Partnership has hired a prominent and experienced Consultant to sell the radio stations. Consultants prepared a comprehensive Memorandum of Offering and actively marketed the property, and continue to do so. However, due to the unique nature of the radio stations owned by the Partnership, and the current economic climate, you are unable to dispose of the radio stations. You represented that disposition of the radio stations within the initial five-year period is not possible, except at a price substantially below fair market value, as required by section 4943(c)(7)(A)(ii). Before the end of the initial five-year period, you submitted a request to the Internal Revenue Service under section 4943(c)(7) for an additional five-year period within which to dispose of the radio stations and you described your plan for disposing of the radio stations. You also submitted the plan to the Attorney General of your state, who has no objection to the five-year extension for disposing of the radio stations. Thus, based on the information submitted, we have determined that the plan to dispose of the radio stations within an additional five-year period can reasonably be expected to be carried out. Therefore, we conclude that you meet the requirements under section 4943(c)(7) of the Code for an extension of five years to dispose of your Corporation holdings.

## RULING

Under section 4943(c)(7) of the Code, the period during which you may dispose of your excess business holdings is extended an additional five years, until December 5, 2014.

We express no opinion as to the consequences (or potential consequences) resulting from any acts of self-dealing under section 4941 of the Code arising from your participation in the Partnership with disqualified persons.

This ruling will be made available for public inspection under section 6110 of the Code after certain deletions of identifying information are made. For details, see enclosed Notice 437, *Notice of Intention to Disclose*. A copy of this ruling with deletions that we intend to make available for public inspection is attached to Notice 437. If you disagree with our proposed deletions, you should follow the instructions in Notice 437.

This ruling is directed only to the organization that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

This ruling is based on the facts as they were presented and on the understanding that there will be no material changes in these facts. This ruling does not address the applicability of any section of the Code or regulations to the facts submitted other than with respect to the sections described. Because it could help resolve questions concerning your federal income tax status, this ruling should be kept in your permanent records.

If you have any questions about this ruling, please contact the person whose name and telephone number are shown in the heading of this letter.

In accordance with the Power of Attorney currently on file with the Internal Revenue Service, we are sending a copy of this letter to your authorized representative.

Sincerely,

Ronald Shoemaker  
Manager, Exempt Organizations  
Technical Group 2

Enclosure  
Notice 437